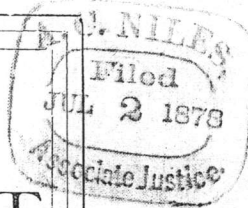


5308

No. 6079



IN THE
SUPREME COURT
OF THE
STATE OF CALIFORNIA.

M. G. CHAMBERLIN,
Respondent,
VS

PACIFIC WOOL-GROWING COMPANY,
A CORPORATION,
Appellant.

J. C. BATES,
Attorney for Appellant.
SAWYER & BALL,
Attorneys for Respondent.

Filed 1878.

..... Clerk.

By Deputy Clerk.

SAN FRANCISCO:
WM. P. HARRISON, PRINTER, N. E. CORNER SACRAMENTO AND LEIDESDORFF STREETS.
1878.

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SUPREME COURT
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STATE OF CALIFORNIA.

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| M. G. CHAMBERLIN, | } |
| <i>Respondent,</i> | |
| <i>vs.</i> | |
| PACIFIC WOOL-GROWING CO., | } |
| A CORPORATION, | |
| <i>Appellant.</i> | |

I.

The complaint in the first count states that the Corporation assumed the loan, ratified and confirmed the action of the President in making the loan and giving the note. It does not matter how or by whom the note was made, if the Corporation assumed the loan and ratified the action of the party making it. It therefore became the loan and note of the Corporation. Citation of authorities is hardly necessary.

No 6079

Chambrelain vs P. H. & Co

Appellants Reply

Respondent's counsel at the conclusion of his oral argument asked leave to present some authorities on the *allegation* and *evidence* as to the alleged ratification by Board of Trustees of said loan (Trans. folios 6 and 33), to show that D. P. Sackett was *competent* to vote in a matter in which his lawful *duty* to the Company was to make expense as *low* as possible, but his individual *interest* to *saddle* the Company with a debt he had become personally responsible for and reaped benefit from the same himself.

"His interest here interfered with his duty," as stated by Chancellor Kent in *Davoue v. Flanning*, 2 John. Ch. R. 255, citing the maxim, "*Emptor emit minimo potest; venditor vendit quam maximo potest.*"

Respondent's counsel not being able to find any authorities, he repeats the matter contained in his oral argument, not perceiving the vast distinction intimated by Court on argument of a contract void for want of authority and one *illegal* or void, on ground of *public policy*.

Hill v. Kidd, 46 Cal. 616.

By reference to authorities cited in IV and V of appellant's Points and Authorities, it will be seen Courts have rigidly adhered to and not relaxed the rule we contend for.

Chamberlain vs D. M. & Co No 6079
 Appellate Reply

An act in the nature of a tort done on behalf of a corporation, by an assault or imprisonment committed by a servant of a company, may be ratified so as to render the Corporation equally liable as if it had originally directed it.

Eastern Co. R. R. Co. vs. Brown, 6 *Exch.*
3, 14.

Abbott's Dig. on Cor., p. 673, *Sec. 1*, and authorities there stated.

Forbes vs. San Rafael F. Co. 40 *Cal.* 340.

II.

The second cause of action is complete in itself. The defendant in the title of the suit is stated to be a Corporation. If there was any error in this respect it is not an error that has worked any injury to the appellant, consequently there is no ground of reversal. The appellant had and used the \$850.

The complaint contains two causes of action that are properly united

Code P, 427.

III.

The appellant says, it turned out on the trial that there was but one transaction between the parties, and therefore the Court erred in denying defendants' motion, requiring plaintiff to elect, on which cause of action she rested her case.

How does this Court know anything about this assertion? The Bill of Exceptions does not purport to contain *all* the facts, and every presumption is in favor of the action of the Lower Court.

IV.

The transaction was not void on the ground of Public Policy, nor any other policy, unless it be a policy that would permit an unconscionable corporation to receive the money of the respondent, apply it to its own use, and then shield itself behind the justice of the law.

The Corporation having received the money, and used it for its own benefit, is bound to repay it, and will not be heard to say the original agreement was not made by a person legally authorized to contract.

Pixley vs. W. P. R. R. Co., 33 Cal. 196.

V.

The Respondent loaned \$850. The Corporation ratified the loan and used the money.

Trans., p. 11, fols. 30 to 35.

We submit the appeal is for delay, and the judgment ought to be affirmed, with damages.

SAWYER & BALL,

Attorneys for Respondent.